with them what we wanted them to report disbursements on a debtor specific basis.

Q And is it your testimony that the debtors agreed at that meeting that the exhibit that they prepared especially for you was an exhibit that would be used to calculate the fees under Section 1930 of the Bankruptcy Code? Is that your testimony?

A At that meeting, no.

MR. HOLTZER: Thank you. Nothing.

THE COURT: All right. Go ahead.

MR. MCMAHON: Your Honor, very quickly. I would like the Court to take judicial notice of four documents that have not been moved into evidence as well as to move the exhibits which I've introduced into evidence if the debtors have any objection.

THE COURT: I take it there's no objection to the exhibits?

MR. HOLTZER: Your Honor, there's no objections to the exhibits that have been introduced to date.

THE COURT: Right. That's what I'm talking about.

MR. MCMAHON: Your Honor, I would like the Court to take judicial notice of the -- in each the Genesis and the Multicare cases the debtor's motion to -- motions, excuse me, to maintain existing bank accounts and business forms and their centralized cash management system motions.

MR. HOLTZER; No objection, Your Honor. They're

and we'll try to speed up the process if we can.

Mr. Walsh?

MR. WALSH: Okay, Your Honor, by my count we're down to ten objecting parties including one or two parties who may not even be here. However, there are a lot of issues. So what I would -- what I would propose is I don't think I'm prepared to respond to an argument -- an objection that I haven't quite heard yet, so I think the best thing would be to let the objectors go forward, make their argument, we'll respond, other people who want to respond, and get done with it that way.

THE COURT: Well, I don't want to go argument by -- in other words I want to hear from one objector at a time. I'll gladly hear from the objectors first and then take your response to all of them. I think at this point that would be the most efficient way.

MR. WALSH: Okay, so you're suggesting that all the objectors would go one after another and then -- then we would all respond to everybody at the end?

THE COURT: That's fine, yes.

MR. WALSH: Or -- or along the way?

THE COURT: No. At the end.

MR. WALSH: At the end. Okay.

THE COURT: Who will go first by way of objection? GMS, sir?

MR. PRIMPS: Certainly, Your Honor. William Primps

for GMS of the law firm of LeBoeuf, Lamb, Greene & MacRae. Your Honor, I'm going to try to be quite brief. The time is getting late and you've heard copious evidence, but I think it can be summarized very succinctly. My August 17th submission certainly argues that we believe that this plan should be rejected because it violates the fair and equitable requirement of 1129B of the Bankruptcy Code.

We think that essentially what Your Honor is faced with here, looking at all the evidence, is every expert and every expert's report in this proceeding has conceded that in the LTC and pharmacy markets there has been a fundamental sea change in valuations over the last four months since the time that the data was input that formed the basis of the valuations contained in the disclosure statement.

As Mr. Grillo's report, GMS Exhibit 8, shows there's been a 65 percent runup in the composites of those two stocks since the time that the data was put into the disclosure statement. So the only issue in our mind is the degree of this runup. Again, going back to the disclosure statement, you're looking at a $1.5 billion enterprise value. We think that taking midpoints of the CS First Boston and UBS Warburg numbers that that number according to the debtor's own experts runs up to 1.75 billion and Mr. Grillo has put forward the Evercore number of 2 billion 75. Mr. Becklean thinks there's a higher number, as he said by taking the additional step of using Mr.

Schulte's technique of looking out the window.

There's also a hurdle amount that I don't know that that has been formally introduced before Your Honor, but it's something that Mr. Walsh had in his submission number three, Debtor's Table 3 of 2 billion 65. We think we make that hurdle.

Now there have been criticisms of Mr. Grillo and his techniques and how he's arrived at his valuation number and I think that much of the fire has been directed against the use of that $220 million EBITDA number. But perhaps the only thing I can do now -- because there has been so much testimony on that is simply draw Your Honor's attention to the number of places in the record where there is support for the $220 million number and, indeed, support for the conservatism of the use of the 220 EBITDA number.

There's the GMS Exhibit 2 and that was a projection that Mr. Hager had worked on of $223,603,000 The GMS-3, the Goldman Sachs documents which, of course, there's been a lot of comment that that should be discounted because it was a selling document and a sales document, that was why right before the luncheon break we brought to Your Honor's attention the number of efforts we've made to bring Goldman Sachs into this courtroom so that they could testify to the numbers appearing in their own documents and the fact that they made a decision not to do so. That number in GMS-3 is $230 million EBITDA.

You heard Mr. Grillo refer to the third quarter report of a $54.9 million EBITDA for the combined enterprise. That appears in GMS Exhibit 5 and again multiply it out by four quarters. That's very close to being on the money at the $220 million level.

And the list goes on. In GMS-12, the Lanassa deposition, there's another Goldman Sachs document, the testimony referring to that appears at -- starting at page 34 of Mr. Lanassa's testimony and that's the $222.2 million number and that reappears in GMS Exhibit 11 which Mr. Kinsey asked Mr. Shulte about again, $222.2 million. We think that this gives ample record support to Mr. Grillo's valuation testimony.

There's also, of course, been a concerted attack on the use of a multiple of in excess of nine by Mr. Grillo. The multiple that it's implied out of his valuation work and a lot of that attack I think is centered around the claim that this is too much akin to the Manor Care implied multiple and Manor Care is, of course, the -- I guess you'd say the Mercedes Benz of the industry as we've heard in the testimony.

I think again Mr. Grillo's testimony stands on its own here, but I would refer Your Honor to GMS-3 another Goldman -- the same Goldman Sachs exhibit that had the $230 million EBITDA number in it. There at page 1862 Goldman is proposing or stating that, "From a financial and qualitative perspective Genesis compares well to other players in the industry such as

Beverly and Manor Care." I think there's some, you know, strong record evidence here that although certainly no one is contending that Genesis should have the same multiple as Manor Care, the kinds of discounts being proposed by the debtors are not accurate.

Now we know that somewhere north of the $2 billion, an enterprise value number, an improper recovery in excess of the 100 percent of senior creditor amounts would be achieved. We've argued the law in our submission to Your Honor that that should result in a rejection of this plan. We personally think -- or we think that one way to prevent this would be in the award of out of money warrants to the G-5 creditors and that way this development of a higher enterprise value which we think is going to occur, that the improper recovery would be prevented. But for now we think that the remedy here is rejection of the plan and we think that the weight of the evidence, Your Honor, supports that finding.

Thank you.

THE COURT: Thank you, sir. Next objector?

MS. MELNIK: Thank you, Your Honor. Selinda Melnik for Charles L. Grimes. Your Honor, I would like to address a few of the arguments that we've made in our objection that were responded to by the creditors committee, the debtor and Mellon as agent for the senior lenders, including on the issue of valuation -- and if I could ask Your Honor's indulgence if you

would give us permission to split the argument a bit and allow Mr. Jenkins to first address the valuation issue and then I'll address the remaining arguments?

THE COURT: That's fine.

MS. MELNIK: Thank you.

MR. JENKINS: Thank you, Your Honor, David Jenkins for objector Charles L. Grimes.

There's two questions here. The first is the valuation of the combined entity and the second is how to break it down between the Genesis and the Multicare creditors. Valuation of the combined entity, only two experts valued the combined entity -- excuse me -- Mr. Becklean was one of them and his report is particularly instructive. He used the numbers of the company and their representatives. He did not make up anything on his own. He used their numbers. That's why there was very little cross-examination on that because there's nothing you can do.

He did make two changes in the comparable company analysis which is the one that he used principally to drive his value conclusions. Excuse me. The two principal changes are unlike UBS Warburg he used a valuation analysis based on Genesis's last twelve months results. And do they criticize that since Mr. Shulte made it very clear that that, in his view was something that was very important to use.

The second, and perhaps more important, was his

change in the discount numbers. We have heard voluminous testimony in this courtroom about how Beverly is comparable to Genesis. Well, if it's comparable to Genesis as a stand alone, Genesis as a combined entity is not going to be a worse company. Yet UBS Warburg used on average a 10 percent discount to the Beverly multiples. Mr. Becklean changed that to zero percent based on the testimony in this courtroom.

He also changed Manor Care because the relations between Beverly and Manor Care according to UBS Warburg and CS First Boston was ten percent. Beverly is ten percent. Better Manor Care is 20 percent better. Well, as Mr. Becklean explained, those two companies haven't changed in the marketplace. Nothing that happens in this courtroom or nothing that Genesis does will change the relative valuation of those two companies.

If you conclude, therefore, that Beverly is -- should be valued the same without a discount to Genesis, then as a mathematical concept the Manor Care number comes down to 10 percent on a discount which is what Mr. Becklean used. Those two changes result in a valuation that is higher than what UBS Warburg and CS First Boston came out together.

Mr. Becklean came out with a range of 1.7 to 2.2 billion. That's in his report. He explained why on the witness stand that, although he could not pick a number, if he had to be biased towards one end or another, you go towards the

top end of the range.

Why do you do so? Well, I think Mr. Shulte said it best. You look out the window. What do you when you look out the window? Well, health care stocks are hot these days. The competitors, Beverly and Manor Care in particular, their underlining earnings are improving. The estimates are being updated even recently the CS First Boston analyst reports yesterday indicated that just in the last month they're improving their estimate earnings for those two companies.

There's not much you can invest in. If you think this is a hot market there's only two or three publicly traded companies. As a result of that, perhaps as a result of other factors, the valuation of multiple -- excuse me, the valuation multiples of the competitors are going up all throughout the spring and summer. The result is that the stock prices of the competitors are soaring. Mr. Hager gave me a hard time about it, but in fact Beverly's stock price as risen by 80 percent between April and August. And no, you can't put undue weight on that but it's something to look at.

What else can you use? I'll represent that if you look at the stock price changes in the UBS Warburg reports, Manor Care's valuation -- excuse me, a stock price has risen by approximately 50 percent between April and August. But when UBS Warburg and CS First Boston put their numbers together, what does the combined valuation of the company come up with?

There have been various numbers put in the paper submitted to Your Honor that take these enterprise values and translate it into a assumed stock price for the company.

In the initial submissions based on the April reports from the two financial experts, the number was $20 and change. The number now is $23 and change. That's approximately a 15 percent increase. So those stock prices of competitors are soaring and everything is getting better, they're not giving them much of an upper bump for that. This is looking out the window to see if the projections -- excuse me, of the alleged results of their experts are appropriate to rely on. For many reasons we think they are not.

Let's look at another thing looking out the window, and that's the company's projections. Mr. Hager testified that they used to miss their targets routinely and they got cautious, but that's an understandable human reaction if you miss your targets. But the result is you get conservative. Mr. Hager was criticized by the financial advisors to the banks for -- excuse me, several of those numbers as coming in unduly conservative.

There's another reason why you might want to make your numbers conservative and that is they're bonuses. The bonuses of the senior officers are based upon the financial projections. Again, it's just normal human nature that you want to make your bonus, you're going to want make those

projections as reasonable as possible, that is as low as possible. So there are several reasons to believe that the company's projections are conservative.

Your Honor doesn't have to decide that, but throw it in in the part of looking out the window. Look what's going on here. The company's projections are probably conservative and everything else in the market is going up, up, up, up, up this spring and summer.

The second part is how do you break it down between the creditors. Based on Mr. Becklean's numbers which we rely upon that the valuation should be at the top end of his range, that combined is above, perhaps materially above $2 million. Now all the testimony we've heard is that Multicare as an individual entity has relatively little value. It has no management. It's essentially subordinate to Genesis. This is reflected, we think, in the separate valuations that the -- excuse me, that the proponents valuation experts have relied upon in particular. We will accept Mr. Shulte's numbers for Multicare standalone. Mr. Becklean did not do a standalone analysis so we don't have anything there to rely upon. But Mr. Shulte said this morning that $323,000 is the most likely value of Multicare. We will accept that.

The result, if you take Mr. Becklean's combined analysis, again you can't use Mr. Shulte's because he didn't do a combined analysis, and subtract Mr. Shulte's number, you get

a valuation of 1.7 billion, perhaps well over that depending on how high we're going up. I have not independently determined what the cutoff number is, the so-called hurdle that you have to get over. I will rely upon the numbers that have been provided to me by the debtors. They say it's 1.55 billion. The number I've just given, 1.7 billion gets us above that.

There's another way to look at how you break down the valuation between Genesis and Multicare and that's the most recent financial results. If you look in the last quarter and this is based on the -- excuse me -- upon the press releases that were put in evidence, Genesis' most recent quarter, standalone Genesis is about 45 million and Multicare is about $9 million. That is a five to one ratio which comes out almost the same as the ratio that you get if you use Mr. Becklean's valuations and subtract Mr. Schulte's standalone valuation of Multicare.

We heard, only a couple of hours ago, that in its most recent -- in the most recent results, that Genesis is ahead $4 million over its projections and Multicare is behind 4 to $5 million. Genesis is the driver of this value. Multicare, to use the analogy, is the caboose. They're along solely for the ride.

Ms. Melnik will explain specifically what we're requesting here, but the overall point we have is that the efforts of the debtors here are -- excuse me -- the proponents

of the plan are attempting to reward the Multicare senior creditors by giving too much of the combined valuation to them. And the people who are getting hurt are not the Genesis senior creditors -- it's essentially the same people -- but rather people such as my client, Mr. Grimes, who's a subordinated debt holder.

Unless Your Honor has questions, I have nothing further.

THE COURT: Thank you, sir. Ms. Melnik?

MS. MELNIK: Thank you, Your Honor. As I stated earlier, what I would like to do is just address in specific some of the responses to our objections that were filed by the debtors, the committee and Mellon to bring a few things to Your Honor's attention.

First, I'd like to address something that Mr. Walsh represented in his preliminary statement which was that this is a plan that had the unanimous support of all of the major constituencies and he included amongst those the creditors committee of Genesis. I believe Your Honor is aware of it, but I would like to bring to Your Honor's attention again, the fact that our understanding is the vote of that committee to support the plan was not a unanimous vote.

THE COURT: I don't think that's what he meant.

MS. MELNIK: Okay.

THE COURT: But in other words to break down within

each of those constituencies whether there was unanimous consent, but it's noted.

MS. MELNIK: GMS obviously as a member of the creditor's committee voted against the plan. Our understanding is that the other members of the committee, which the membership is listed on page 65 of the disclosure statement, include American General and it was brought to my attention today that they have resigned as of yesterday for reasons that we don't know. Is that correct that they have submitted a resignation?

MS. BECKERMAN: Your Honor, it is correct that they have submitted a resignation.

MS. MELNIK: I don't know what the implications of that are, but I just wanted to bring that to Your Honor's attention.

The second issue that I think bears comment at this point for a number of reasons including the fact that in the debtor's proposed findings of fact and conclusion of law they make a statement -- they make a finding that the burden of proof on all issues in 1129A and B, it's on page 7 paragraph 3 --

THE COURT: Is that in debtors confirmation brief? I don't recall that framework for debtors presentation a finding of fact and conclusions of law submission.

MR. HOLTZER: Your Honor, she's referring to the

confirmation order that we --

THE COURT: Oh, the confirmation order.

MR. HOLTZER: The proposed confirmation order, Your Honor.

THE COURT: I see, all right.

MS. MELNIK: It's on page 7 of the submission that we were handed this morning, Your Honor.

THE COURT: Did I hand that back to you. I think I might have. No?

MR. WALSH: You might have handed it back to me, but I was actually going to ask you to trade since I gave you the one without any exhibits. So if I can locate that --

THE COURT: In any event, on page 7 -- go ahead.

MS. MELNIK: In the version I have it's page 7 and it's listed as numerical paragraph 3. Burden of proof is the heading. It states the debtors have the burden of proving the elements of Section 1129A and B of the Bankruptcy Code by a preponderance of evidence. We have asserted in our objection that the standard for 1129B should be clear and convincing evidence based on a number of decisions of numerous courts and we make note there as well that that issue has not been decided in this Circuit, to our knowledge. The debtors in their response to our objection -- and I believe maybe one of the other responders to our objection -- make the assertion that the correct standard for 1129B is preponderance of the

evidence, particularly with the issue of cram-down in valuation.

And I also would assert on the issue of the validity of the proposed releases that that involves the relinquishment. Both of those elements -- their impact is the relinquishment of some serious property rights that otherwise would inure to the benefit of creditors and perhaps others and that, therefore, preponderance of the evidence is insufficient. And I think that's where those courts that have found the clear and convincing standard more appropriate in 1129B have come out.

THE COURT: The releases that we're talking about -- releases can be, indeed, an 1129 question, but they need not be and in large part in this case I don't think they are, are they? In other words, it's more of an 1129A-1 question, isn't it? A 524 inquiry?

MS. MELNIK: I agree, Your Honor. I think they come in all different sizes. Mellon argues that the releases that we're contesting don't come under 524E and I'll get to that in a quick second. Yes, definitely they come under 1129A-1 in that respect, but we would also argue that to the extent that they release claims belonging to the estate whose prosecution could bring value into the estate, they do fall under the valuation hurdles within 1129B. And to the extent they're relinquished and the relinquishment gives up value that otherwise might inure to the benefit of cram-down creditors, I

think that issue might appropriately be included in 1129B as well. And that's not just the third party releases it's the inter-company releases as well, the proposed settlements.

THE COURT: Well, that's a different question maybe, but on the releases of officers, directors, etc., the only evidence we have in this record is that there are none that are known of. Do we have --

MS. MELNIK: The other -- I'm sorry, Your Honor.

THE COURT: Go ahead.

MS. MELNIK: The other evidence was that none were investigated.

THE COURT: That's correct.

MS. MELNIK: Okay, which is another issue.

THE COURT: Okay.

MS. MELNIK: And my next point is actually the releases, Your Honor. A couple of things. It's our position that they are not fair, they're not necessary and under Third Circuit they're not sustainable, in general. Our additional position is that they affect a settlement that requires Court approval or at the very least, puts on the debtor a burden of proof to show that these were investigated to explain to the Court what the investigation revealed, if anything. And to the extent that there is some potential viability to the claims that have been raised, that a valuation of whether or not it was in the benefit of the estate to go forward with their

prosecution, what was done in that regard.

Instead in their responses to our objection and several of the other objections filed in this case, Mellon and the Genesis Committee and the debtors do a number of things, essentially boiling down to the fact of taking the position that they're in the best interest of creditors. And we respectfully assert that that's for Your Honor to decide and not for the debtors or the committee or Mellon.

I would like to go through some of the points that are raised by the responders to the objectors that I think are important. In its response Mellon asserts that the releases are an integral part of the compromise embodied in the plan. That's an exact quote. I don't know the page number. I apologize. To me that sounds like a settlement and on that point I would refer back to my previous comment that the burden of proof on whether that such a settlement and compromise is in the best interest of the estate, we would assert has not been met or even shown.

Mellon also argues that Section 524E doesn't involve the kinds of third party claims that we're talking about, that it really only deals with debtor and co-debtor claims. Well, we would argue that it does involve and include claims that are derivative of debtor claims and also claims that derive from an indemnification obligation of the debtor. And to the extent that third parties are implicated in those derivative claims,

they are impacting a release that parties who have voted to reject the plan have not agreed to. And to the extent that any order granting those releases is entered, it is our position, the position we've taken in our objection, that those releases should be expressly limited to exclude their impact on those creditors who have not voted to accept the plan under Third Circuit law.

Also, to the extent that those are -- the claims that we are concerned about are derivative of claims the debtors might have against the numerous third parties, including any right to move for the equitable subordination of the senior lenders, the creditors will be bound by that release even if they have voted to reject the plan. Again, that's a settlement, is our position, of a claim that has been asserted in this case by, most recently, the Multicare Creditors Committee that Mellon argues was withdrawn with prejudice.

Our recollection, and I think the record reflects that the transcript of the disclosure statement hearing, is that that release -- I'm sorry -- that withdraw of the motion was only with prejudice if the current plan of reorganization with the distribution that was given to the Multicare creditors in exchange for that withdraw of their motion, is confirmed. That hasn't happened yet. So I don't think it's completely accurate to say that it was withdrawn without prejudice. It was withdraw contingent on confirmation of that distribution to

the Multicare creditors.

Mellon also argues that the release of Mellon itself as an agent, is in consideration for the distribution that the banks are making to Genesis classes 4 and 5, the unsecured creditors and bondholders, which they say is essentially a gift from the senior lenders. Well, first of all, they have to get past the hurdle we raised about the absolute priority rule. And even given if that is true that that is a gift, that's not a gift that's coming from Mellon as agent for the lenders. Mellon, in this case, served as agent for the senior lenders of Genesis and Mellon served as agent for the senior lenders of Multicare. The release that they are getting is, in our opinion, for no consideration. There's no quid pro quo there and as a mere agent they had nothing to give up in consideration.

The next point that they make is that the bank should be entitled, and Mellon should be entitled, to the releases because of the indemnification provisions under the pre-petition loan agreements. And even if those are sustainable and not otherwise attackable, those are two party agreements. Third parties, such as Genesis creditors, never agreed to be bound by those agreements and I don't believe that on the basis of those indemnifications, those releases can, in any way, bind those third parties.

Finally, Mellon seems to argue that there would be no

distribution to class G5 without those releases and, again, we would assert that that is only true if the valuation shows that they are not getting more than a hundred percent of their claims.

With regard to the committee, they essentially argue that the release provisions that apply to the committee should be approved because they're essentially the same provisions that we involved in the PWS Bruno's case that the Third Circuit upheld in its decision not too long ago, I believe 2000. If you take a look at those provisions, they are not the same provisions. The provisions in the PWS case, which are set forth in the Third Circuit's decision, include language that are not included in the provisions that are set forth in the plan and in the disclosure statement in this case. On the Third Circuit specifically said that exculpation and immunities are not blanket vis a vis creditors committee and that the committee and its members do remain liable for wilful misconduct, gross negligence and ultra virus acts. And, indeed, the PWS release provision recites the wilful misconduct and gross negligence and the Court, Third Circuit and PWS, specifically says that the ultra virus acts as well need to be included in a carve out of total indemnification and exculpation.

And in support of that, the Third Circuit looks to Bankruptcy Code Section 1103C and finds that that requires that

and indeed in the PWS case that release provision looks to the duties and responsibilities expressly under 1103C, which this provision in this case does not.

Management, with regard to the releases, the officers and directors, the management received -- the debtors and others argue that management received various releases, forgiveness of loans, etc., etc. fairly early on in the case and, therefore, it's the law of the case and Your Honor doesn't have any ability to overturn that. We would take exception with that, but we would also like to bring to the Court's attention that obviously things change and one of the things that changed is that at the time of the -- our understanding is that the time of the motion for the approval of various employee retention programs, the picture that was being presented in this case was a little bit different.

At the disclosure statement hearing Mr. Walsh mentioned that at the beginning of the case the banks asserted that they were over secured and on that basis sought and obtained from Your Honor adequate protection payments. I think that seeking very expensive employee retention payments in an atmosphere where one is being told that the senior lenders are over secured, is quite different than seeking employee retention payments at a point in time as now where all of sudden we're being told that the banks aren't going to be getting a hundred cents on the dollar for their claims. And

also that more junior creditors are not going to be paid.

We would also argue that the range of benefits inuring to the officers and directors is fairly substantial and comes, as Your Honor was presented today, in many different forms. And while the creditor's committee, I believe, argued that this is compensation as well for post-confirmation work, with all due respect that work hasn't been performed as yet.

Finally, the release of potential claims against management and the officers and directors is asserted to be further compensation for their pre and post-petition and post-confirmation services. We would argue that they're getting enough already. We would also argue that their position that having to respond to any claims asserted against them post-confirmation, would detract from their duties and be harmful to the estate, is highly speculative and we believe not relevant.

Finally, to the extent that there exists claims against the officers and directors that may or not have been determined or dealt with otherwise in the retention motions, and those claims are being released by this plan, again, we would assert that this is in the nature of a settlement. It requires meeting a burden of proof that has not been presented to this Court. As Your Honor pointed out, we heard testimony from Mr. Hager that these were not even investigated, they were certainly raised. They may not have been asserted formally until the motion for the appointment of a trustee by the

Multicare Creditors Committee, but they had been asserted in other ways, I believe, through negotiations on information and belief.

Again, that requires Court approval. It's not something for the debtors or the committee or Mellon to say is in the best interest of creditors and that it's our position that there has been absolutely no offering of proof in support of a settlement of those issues.

Finally, Your Honor, the last major point that was addressed by the responders to our objection was on the issue of substantive consolidation. And I want to make perfectly clear, Your Honor, that what we are asserting as the improper substantive consolidation is not how it's being characterized in several of those responses. All of the supporters and proponents admit that this plan gives rise to a deem consolidation and they assert that in response to our taking the position that there is a substantive consolidation occurring here that hasn't been proven or approved. That's not the consolidation we're taking about, the internal Genesis and the internal Multicare consolidation.

Also, the committee and others argue that we're saying that the post-confirmation merger is an invalid substantive consolidation. And that's not what we're saying either.

THE COURT: What are you saying then?

MS. MELNIK: Here's what we're saying. What we're talking about is the merger that is going to incur in a nano-second on the effective date of the plan that will result in securities of the reorganized Genesis and those securities are essentially the property to be distributed to creditors under the plan. What we believe is happening here is form over substance. The debtor can't have it both ways. To argue that all of the synergies that could possibly occur through the merger of these companies has already occurred since 1997 -- you know, that brings up the question why bother with merger. Why didn't you do it before they said they had to go into Chapter 11 to do the merger? But they're going to do the merger a nano-second after the confirmation becomes effective. And they're giving Multicare creditors Multicare stock, essentially reorganized Multicare stock, and then merging that entity in a nano-second after confirmation into Genesis.

THE COURT: What's wrong with that from the standpoint if we understand the proposal, that it seeks to allocate the debt and equity, the new debt and equity, in a proportional way?

MS. MELNIK: We believe it doesn't, Your Honor, for the reasons that were discussed before and also because the allocation -- well, there are a number of things. First of all, just the allocation in and of itself. Mellon represents in its response to our objection that the allocations under the

plan were the result of arm's length negotiations. The problem we have with that is that you've got two arms and one body. There was one body that was the senior lenders or their agents negotiating on their behalf and the right arm and the left arm disagreed -- I mean agreed and shook hands. I think that's a fairly unique definition of an arm's length negotiation.

THE COURT: Do I have any evidence on this record to reflect that the proportionate distribution of a debt and equity to Genesis versus Multicare creditors is improper, is out of whack, is inappropriate?

MS. MELNIK: Yes, I think Mr. Jenkins specified a number of areas that had to do with the valuations that were done of Multicare and Genesis. I think you also have testimony on the liquidation valuations that were presented to Your Honor yesterday that showed that the assets -- one of the points that came out is that the appraisals and other things that had been utilized by the banks in the pre-petition stage were considered by the debtor's financial advisor to be so out of date they couldn't even use them.

I think you heard testimony today from Mr. Hager that talks about an incredible commingling of assets as well as liabilities amongst these debtor groups. The debtors have utilized the argument that certainly internally amongst these groups, if not together, they couldn't separate things out and that's why they've done a deem consolidation, at least on the

vertical, in the vertical sense. And as the committee cites the Fifth Circuit of Babcock and Wilcox recently finding that its substantive consolidation occurs when assets and liabilities of separate and distinct legal entities are combined in a single pool and treated as if they belong to one entity.

There's a pool of assets here, that's reflected by the reorganized Genesis and the stock that's going to be distributed based on that reorganized Genesis. There are elimination of inter-company claims which is another point that the Fifth Circuit and the Second Circuit recently looked to in terms of substantive consolidation, and liabilities are being satisfied from a common font. I don't know, based on the liquidation valuation testimony that was presented in this Court, whether indeed the allocations are valid. I don't think this Court has any way to determine that.

THE COURT: All right, anything else?

MS. MELNIK: Your Honor, just in closing, we believe from the evidence that's been presented to Your Honor, that the purpose of the bankruptcy filing of both of these sets of debtors was designed to wipe out the sub-debt and the unsecured debt prior to effecting the merger that was contemplated ab initio and in the process to release several sets of claims both of the debtors and against the third parties might have against the banks and management. We haven't heard of any

other justification that's been presented in this case.

THE COURT: The fact that there was -- I don't know -- 1.8 billion dollars of secured debt would not have done it?

MS. MELNIK: Well, they were over secured at the inception of the case, according to them, and they got adequate protection payments from Your Honor and a number of other major expenditures came out of that estate right off the top. And I think you've heard evidence about how those debtors have performed since then and what's available at the exit line. And speaking of the exit line, in terms of the valuations I think all those numbers can be juggled six ways to Sunday, as I think Mr. Schulte or someone else said today, the approach is unavoidably judgmental. And they can be juggled many ways for the reasons that were stated previously to show lower valuations to meet the goals that we think were the goals at the inception of this case.

It's our position that the only way to show true value of reorganized Genesis common stock is how the marketplace will value it, which we won't see till the merger occurs. Mellon cites a case from the Northern District of Illinois that stands for the position that you can't take into account the valuation of stock post-merger if you're valuing that stock prior to the merger. And that case addresses appraisal rights of minority shareholders in a buyout situation before a merger goes forward.

We found, at least one case, that I just want to bring to Your Honor's attention, that seriously discredits and takes issue with that position. Your Honor, it's Lawson, Martin, Wheaton, Inc. v. Smith. It was decided July 14th, 1999 by the Supreme Court of New Jersey and the cite is 160 N.J. 383, 734 A.2d 738. That court remanded to the lower court and instructed that court to do a post-merger valuation for the purpose of determining the distribution to those buyout objecting minority shareholders. We don't take a position on whether that situation is wholly analogous to this, but as Mellon raised it in support of their position, we thought Your Honor should know about this other case.

Because we believe that true value doesn't occur until the merger and the marketplace puts a value on it, and because we see this distribution of reorganized Genesis stock amongst the classes as an intra-creditor dispute, while we would sit with GMS and says yes, our best wish is for you to reject the plan, Your Honor. But short of that, we don't see a reason why that merger can't go forward and all of the other distributions under the plan be made including a distribution of all but ten percent of the stock that would be going to the senior lenders of Genesis and ten percent of the stock that would be going to the senior lenders of Multicare and have those two sets of stock be placed in escrow until a point in time when the market sets a value. I believe at his deposition

Mr. Hager testified that that kind of -- they can't get listed on the New York Stock Exchange until they've gone through a quarter --

MR. HOLTZER: Objection, Your Honor, that's not in evidence. The deposition is not in evidence.

MS. MELNIK: Oh, I'm sorry.

THE COURT: Indeed it's not.

MS. MELNIK: I don't know when that date is, Your Honor, let me say that. We can pull forward or have -- I'm sure we have tons of investment bankers here who could tell you better than I could when an appropriate date of when the market values a stock upon a merger. But that is one recommendation that we would make, Your Honor, that we would like you to consider as a possible resolution of this intra-creditor dispute. Thank you.

THE COURT: Thank you.

MR. GEORGE: Thank you, Your Honor, Edmond George, Obermayer, Rebmann, Maxwell and Hippel on behalf of the AGE Entities. Your Honor, having been in court for the last two days and probably not being one of the more significant players in the case, some of the things that I've heard over the past couple of days have struck me as curious and somewhat confusing. But the most confusing thing to me is how the debtor has backed off from some of the statements that they've made in their disclosure statement about how great this merger

was going to be for creditors. For example, on page 76 of the disclosure statement they say, "In summary, the security the creditors are entitled to receive under the proposed scenario incorporates the value of the combined Multicare and Genesis estates.

It is the position of both debtors that through the preservation of the common infrastructure purchasing power, access to capital and opportunities for administrative cost reduction, value is created which exceeds the value that each company would realize independently." But yet when they brought their experts here and it seems to me that the debtors position is that the more people that say it, the more true it becomes because I do believe that the testimony was in large part cumulative and duplicative.

But there is a real question in my mind whether this solicitation was made in good faith because creditors who read that disclosure statement were under the impression that this merger was going to add value to this combined entity. But all the testimony from all of the debtor's experts in this case seem to say that the sum is no greater than the two individual parts and that seems disingenuous --

THE COURT: I will tell you that's not how I understood it, although clearly you're right to focus on that provision in the disclosure statement from the standpoint of operational synergies. We do understand that much or all of

that has been accomplished and that is somewhat misleading, that is, the statement that you've read. Whereas what I understand is proposed here by way of enhanced value is the capitalization opportunities, the worth of equity of a larger operation, that kind of merger value.

MR. GEORGE: And, Your Honor, that may be something that you, with all due respect, as the Judge and me as a bankruptcy lawyer with some years of experience would understand, but I think if you read it, that's the impression that's intended to be given there that there is synergies that, as a consequence, would increase the value of the combined company and that's why the stock has a benefit to unsecured creditors because once they get the stock, there's going to be an increased value. But no one's spoken about that and strange credulity that in this combination where these savings in administration costs are being procured, that there's absolutely not one dollar in increase.

And it's AGE's position, Judge, that this transaction is, in large part, being driven by the secured creditor in this case and that, I think, can be viewed as far back as February when Your Honor entered the order on the management incentive compensation program. Back then they said we want to be out before October 31st and if you do management, you're going to get an incentive. Well here we are two days before the end of the month and miraculously we're here.

The plan as we see it, Judge, is unfair. It's unfair to creditors and part of the unfairness is some of the issues that I raised with Mr. Hager and they go to the compensation that's being provided to management in this case. Your Honor, with the combination of the monies that are being either paid directly to the management of the debtors or being forgiven to them by way of debt relief and in the gross ups that are being paid to these people to pay the taxes on the forgiveness. I don't think there's any justification for that in a case where creditors are getting less than seven cents on the dollar.

These managers, these operators of the company, are getting a hundred percent on their pre-petition claims that relate to deferred compensation, as we heard. They're getting a big bonus for coming out of bankruptcy, just the fact of coming out of bankruptcy. None of it tied to performance and our position is, Judge, is that management has done what the bank group has wanted them to do to get this case where it is. And it's ironic that the valuation that has come in is so close to the bank debt.

I think that the testimony of the objectors in this case more accurately portrays what the value of this entity is on a combined basis. Rather than go back over that, I'll let my colleagues discussion on that be the word of the day from AGE's standpoint.

Your Honor, we believe that there has been an effort

by the debtor and the bank group to suppress the value of the company in order to keep unsecured creditors out of the money in this case and we don't think that's fair and we think that it's ironic that not one of the experts in this case opined about the value of this company on a combined basis. And I think Your Honor has to ask the question why wouldn't they do that. If what creditors are being asked to take are shares in a merged company, why aren't we finding out what the value is on a combined basis. I think that's a question that Your Honor has to ask.

Your Honor, with respect to the specific provisions of the plan that we objected to, I think they can be summed up as the issues that relate to the releases and the punitive damage claim. We asked Mr. Hager about punitive damages when he was on the stand and he said that not only has Genesis never had one adjudicated against him, that he was unaware of the existence of any that weren't covered by insurance.

There's a case that was in the District of Delaware called In Re F&F Holdings. It's a February 17th, 1990 case. It is Lexis case, Judge, 1998 U.S. District Lexis 10, 741 and that's Judge Farnan. And he says, "That the bankruptcy courts neither prohibit or mandate the allowance of punitive damages. However, courts have the equitive power to limit or disallow punitive damages where the claims would frustrate the debtor's reorganization," and they make reference to the AGE Robbins

case which is found at 89 BR 555. And in this case, the F&F case, the Court said, "The Court believes it would be premature to disallow punitive damage claims against the debtors. There are only two claimants with punitive damage against the state, neither of which have been liquidated. Morever, the debtors do not contend that allowance of these punitive damage claims would significantly hamper their reorganizational efforts. Accordingly, the Court will sustain C. Finn's objection to the exclusion of punitive damages under the plan."

There has been absolutely no testimony, Judge, that this is a case like the AGE Robbins case or other cases where there are massive torts and punitive damage claims. It's simply not the case here and to say that punitive damage should, out of hand, just be dismissed because the bank group doesn't feel that they should participate with other unsecured creditors, it's unfair. We think it's inappropriate and we think it's not permitted.

There's another case, Your Honor, that I point to Your Honor and it's Allegheny International, Inc. and it's reported at 106 BR 75. And in that case the court, and it's Judge Consetti (phonetic) in Pittsburgh, he says, "The Court has far reaching powers to sift the circumstances surrounding any claim to see that injustice or fairness is not done in the administration of the bankruptcy state." And then he makes reference to the Robbins case. He says, "The Court recognizes

the wild card characteristics are punitives." But in that respect, Judge, he says, "In this case there appears to be no extraordinary punitive damage claims, nor do the pending punitive damage claims implicate any inherently dangerous products or otherwise affect the debtor's ability to reorganize." And, Your Honor, that seems to be the theme of these cases that talk about punitive damages.

In those instances where the punitive damages are monumental and if the allowance of them would prevent the estate from going forward with the confirmation of its plan, then, in that instance, I can see both the business justification and a legal basis for it. But under the facts of this case, Judge, and I would indicate that the debtor did not propound any evidence about this issue, that there's absolutely no information from which the Court could rule that that separate classification of punitive damages for the other members of the G4 classes in the Genesis estate is appropriate.

The other issue, Judge, and the language of the plan and disclosure is not, in my opinion, a model of clarity on the issue, but we, the AGE Entities, have filed RICO claims against the Genesis entities which are being litigated in Delaware in the District Court. And, Your Honor, when I objected to the disclosure, the objection that I made at that point was that it was inappropriate to grant a third party release because I believe that the AGE Entities may have claims against Mr.

Walker, Mr. Hager and possibly the bank group and other members of the board of directors of Genesis. And in this case, Your Honor, there's been absolutely no record established, no record evidence established either for the need for that release or the propriety of that release under these circumstances.

And, Your Honor, I would ask Your Honor and I'm sorry to be rushing through this. I hope that I'm not going too fast, but the Continental II case, 203 Fed.3d. 203, talks about releases of this type. And they say that releases of non-debtor parties are regarded with great disfavor and that there must be factual evidence in the record to support the conclusion that the released and permanent injunctions are the key -- the word key -- to Continental debtors reorganization or that the Continental debtors would be unduly burdened.

Now, Judge, here there's been absolutely no indication that that's the case. All they've said is that we want these releases. There's not been any testimony on the record that there's been one of these lawsuits filed. There's not any testimony that even if any such lawsuit was filed that anybody is being burdened by it or that there's inability to go forward with the business of the debtor at hand because of it. And there is absolutely no evidence on the record to support it.

And, Your Honor, I think I don't have to repeat to Your Honor what the standard is, is that there has to be a

showing that there's a fairness element involved. There has to be a showing that there's necessity for such an injunction. And I submit, Judge, that even under a flexible approach which the Court would be required to take with respect to these matters, that there is no justification for a release in this case of any party, particularly the bank group and the individual officers and directors of the company.

Your Honor, in sum, our feeling, the AGE Entities feeling, is that the debtor has suppressed the value of the assets of its company on a combined basis for the purpose of precluding unsecured creditors, like AGE, from getting a meaningful distribution. We don't believe that it's fair and equitable. We don't think it's in the best interest of the unsecured creditors that the plan be confirmed. We feel that the plan violates 1129A in that it is not proffered in good faith and that it violates the provisions of the Bankruptcy Code dealing with separate classifications and that the classification is not grounded in any business judgment.

The one statement that was made by, I believe, the bank group in response to the objection that we filed was that any money that unsecured creditors are getting in this case it's coming from the bank group anyway so since the creditors are out of the money, they don't really have any reason to complain in this case. Well, Judge, we submit that there is value in this case and that the experts that were propounded by

the debtor in this case should not be relied upon by this Court. We believe that the unsecured creditors are not being fair and we would urge Your Honor to not confirm this plan.

THE COURT: Thank you, sir.

MR. GEORGE: Thank you, Your Honor.

THE COURT: Other objectors.

MS. MORRISON: Good afternoon, Your Honor, Susan Morrison on behalf of 44 tort claimants. In the interest of time I'm going to adopt the well reasoned arguments of counsel for the objectors on the issues of third party releases and valuation and will only supplement where I have something unique to say.

On the issue of third party releases, as you know Your Honor, we represent the very parties in this case who are the most injured and those are persons who have suffered losses of limbs, losses of life at the hands of the debtors. And in the context of the proposed plan, the debtors are seeking to exculpate themselves in total from liability for maiming, and killing in some cases, the very wards that they were charged with protecting in the contexts of the operation of the nursing home businesses without any justification -- as counsel pointed out -- without any testimony to support the need for such a classification. We consider this classification to be unfair and we consider the debtors categorization of punitive damage claims to be disparate in impact.

In the classification G7 which includes punitive damage claims, the debtor has lumped together, in one fell swoop, all persons having claims that are considered punitive without any differentiation between those that are insured or uninsured or compensable or purely punitive in nature. And debtor's remarks are oh well we tried to work with you, counsel, when you objected to our classification at the disclosure statement. It's not my place to tell the debtor how he can address in a definition the variations in the laws on punitive damages and the insurability of punitive damages both the classification of the damages as being exemplary or compensatory and the insurability of those damages in every state.

Frankly, I don't know, as I stand here today, the vagaries of the various laws on those issues. I know a few. I know as I mentioned in my cross-examination of Mr. Hager, that in the state of Alabama, for example, that a wrongful death claimant is limited solely to punitive damages and those claims are considered compensatory. Likewise in the state of Texas a punitive damage claim is a hybrid of both a penalty and an inconsequential damage component, if you will, and attorneys fees. In other states attorneys fees are awarded as part of the punitive damages as opposed to as a separate claim.

So I don't frankly think that the debtor could come up with a definition that would put, fairly put, the proper

sets or subsets of punitive damage claimants in one particular class. And, therefore, it is our position that because of the disparate treatment of punitive damage claimants, that in addition to the fact that the subcategorization is unnecessary and an unfair classification in the first place, that there has been no showing by this debtor to justify the disparate treatment of those persons within class 7.

On the issue of valuation and without getting into, again, I adopt everything that the objectors have said, but also I think it's interesting to note, Your Honor, the timing of this plan. While it is certainly a laudable goal under other circumstances for a debtor to submit a plan of reorganization early in the reorganization process, I think it's telling that Genesis is rushing to the table with a plan when all of its constituents have taken, you know, companies that have gone in earlier than Genesis and are still in bankruptcy. Vencore went in in September of '99 and they came out in April of 2001. Mariner went in in January of 2000 and they don't have a plan on the table yet.

I think it's telling, Your Honor, in the context of bad faith. This plan is being railroaded through by the secured creditors. Why? For the reason that the valuation testimony that you heard today based on 12 month historical figures, which under other circumstances would be perfectly appropriate, was orchestrated with the intent that this Court

not consider the drastic change in the long term care market which has occurred in the last two quarters. I think it's also telling that Mr. Hager testified that the APS deal is in the works and I believe his testimony was that there was no letter of intent signed which was contradicted by Mr. Schulte who said that there was, in fact, a letter of intent and that there was no similar letter of intent with Omnicare because they had an exclusive deal.

Now, why don't we wait until that deal closes instead of just assuming that it will never close because of all these speculative contingencies with, you know, Omnicare submitting a bid and auction processes and things that are purely speculative in nature. What is the reason that we are rushing here to have this Court approve a plan before we know whether Genesis will be the successful bidder or purchaser of APS and before we have historical data, six months from now, on what the impact of that transaction is on revenues, earnings and EBITDA and the like? And I suggest that the testimony of debtor's witnesses, coupled with their experts, coupled with the timing of this plan, justify this Court rejecting the plan on the basis of bad faith.

On the issue of the punitive damage subordination, we raised in our objection that, according to the United States Supreme Court in the recent case of United States v. Noland, that the debtors attempting to categorically subordinate

punitive damage claims, which violates the mandate of U.S. v. Noland. In response the debtor said oh we didn't really mean equitable -- we didn't mean to subordinate punitive damage claims notwithstanding that we say that in page 21 of our disclosure statement, that was a typo and it doesn't say that in the plan. What it says in the plan is punitive damage claimants will receive nothing. It doesn't say anything about subordination and the debtors are relying on the fact that the plan document controls.

Well, it seems awfully convenient that the debtor can ignore its subordination argument once I raised U.S. Noland and simply say that it's a typo and, you know, the ultimate document is the one that controls. In fact, the U.S. v. Noland case is apposite notwithstanding the debtor's attempt to distinguish it in their papers. In that case the Supreme Court considered equitable subordination of a tax penalty. It discussed at length the Fifth Circuit case of In Re Mobil Steel which was highly cited for the issue of equitable subordination and the fact that it's only appropriate in situations where a creditor has engaged in bad conduct, pretty much. There've been a whole plethora of cases that have discussed what the type of conduct which would justify equitable subordination would be and they basically involve fraud, self-dealing on the part of insiders and so forth.

In this case, you know, we've kind of flip flopped

the law. We have people who are innocent incompetents, in most cases, who have themselves sustained personal injuries, and in some cases wrongful death, at the hands of the debtors and yet they are being penalized and punished by being entirely disenfranchised without any showing, without any showing of inequitable conduct or bad conduct or anything else, simply by the debtor suggesting that they had a typo in their disclosure statement and that the United States Supreme Court mandate on this issue is inapposite because it's a tax penalty as opposed to a punitive damage claim.

I suggest, Your Honor, that all of the cases cited by debtor to support the subordination or disallowance of punitive damages pre-date the Noland opinion. And since the Noland opinion there have not been any, to my knowledge, cases which distinguish that opinion in the context of bankruptcy punitive damage disallowance or subordination.

With regard to the debtors position that this deal cut between senior lenders and the committee, is consensual and it doesn't involve any violation of Bankruptcy Code because it's a side deal among creditors, I would respectfully suggest that the committee, if that's the case, breached its duty to my clients who are constituents of the committee, notwithstanding that the proposed plan considers my claimants, my punitive damage claimants, to be some sort of disenfranchised group. Unless and until there's a confirmation of that plan, my

clients are unsecured creditors and the committee has an obligation to act on behalf of all unsecured creditors not just the ones that sit on the committee. And, in that context, I think that the committee has breached its obligation to punitive damage claimants by completely sacrificing them to the lambs and suggesting that they be disenfranchised so that the remaining body of unsecured creditors could receive an enhanced distribution under the plan.

On the issue -- again, counsel mentioned this so I'll only mention it very briefly, Your Honor. The testimony is that the debtor doesn't believe that there are any punitive damage cases. In fact, Mr. Hager said in his tenure with the company, which is over a decade, he's never seen one. If that's the case, coupled with the disclosure statement references on page 21 of debtor's counsel that notwithstanding that several proofs of claim have been filed concerning personal injury or wrongful death claims that include punitive damages, that the Genesis debtors do not believe that there will be any allowed claims in this class. So this is much ado about nothing, Your Honor. We think there's no justification for the subordination disallowance, whatever they want to call it, and that coupled with the fact that we think that this company has been undervalued, that the debtors have not met their burden, even under the preponderance standard of showing that there is insufficient equity to distribute to the

unsecured creditors, and for that reason we think that the plan should be rejected.

THE COURT: Thank you.

MR. HUDGENS: Your Honor, David Hudgens. I think one advantage of coming late to the game is I'll necessarily be short. I think the debtor in this case has failed to meet the statutory requirements for confirmation of this plan. In order for you to confirm this plan, there has to be a liquidation analysis because the Code requires you to consider other things in relationship to the liquidation analysis. The only thing the debtor did was put on a witness who purported to give a liquidation analysis that considered one manner of selling the business in a consolidated fashion as far as all the different legal entities that existed, although he segregated those sales into kind of lines of business.

Well there hasn't been a consolidation of all those individual legal entities in this case. We have no idea what a liquidation analysis would show if you took the legal entities that exist now and considered liquidation of all those separate entities and saw what the results were.

In addition, that expert testified that he never even looked at appraised values of the company's property in considering that liquidation analysis. He doesn't know the only piece of property that there was a value given for was the corporate offices and it was valued at between 25 and 50

percent of cost, but there was no testimony about why it was valued at between 25 and 50 percent of cost. There could be extremely unusual circumstances where corporate offices could lose that much value, but common sense tells you they probably didn't. So the only time they used value for a piece of property, they used, what from all appearances is, an extremely unrealistic value without ever looking to see if there was an appraisal of the property.

Now, he gives the excuse that well they're dated, the appraisals are dated. But when I asked him about it, he never looked to see when they were done. He didn't know. He'd never considered that. Now I submit that one of the reasons that that analysis was never done is because there's this senior lender out there that's got a security interest in a whole bunch of stuff and that senior lender or the secured lenders in most bankruptcies would be looking at that. But in this case they don't have any incentive to. Why? Because they're getting essentially all the stock of the corporation any way. They're going to get what they want without ever having to go through the analysis that the Code requires. I believe the debtor has just failed to meet the statutory requirements of setting forth to liquidate a realistic liquidation analysis for these debtors.

The next place I think there are problems is the disclosure statement and I realize there's been a hearing in

which the disclosure statement was approved, but that disclosure statement is the basis for people deciding how to vote on this plan. We get in here a month after the disclosure statement is sent out -- roughly a month after the disclosure statement is sent out -- and every expert testified that the company was worth roughly 250 million dollars more than that disclosure statement said the company was worth. That's roughly 15 to 20 percent increase in value of the company over the values given in the disclosure statement.

Now, I believe that the values given in the disclosure statement weren't even accurate when the disclosure statement was sent out because I believe most of the runup in the stock occurred before the disclosure statement was sent out. But even if the disclosure statements were accurate when they were sent out, this Court should consider that by the date of the confirmation hearing the value of the entity was 15 to 20 percent more than the disclosure statement showed. I don't see how this Court can approve a plan where votes were solicited on disclosure statements where there's such a disparity in value.

And my final point is that a plan has to be fair and equitable. And I think in considering that requirement, the Court has to take into consideration that the officers and directors of a corporation have a fiduciary duty to the shareholders. In addition, once the corporation is insolvent,